

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

MARIAH R. SMITH,

Plaintiff,

v.

CASE NO.: 23cv01337-LA

CITY OF WAUWATOSA et al.,

Defendants.

DEFENDANTS' AMENDED ANSWER and AFFIRMATIVE DEFENSES

Defendants, Captain Luke Vetter, Lieutenant Jeffrey Farina, Officer Benjamin Ziegler, and City of Wauwatosa, by their attorneys, WIRTH + BAYNARD, submit their Amended Answer and Affirmative Defenses to Plaintiff's Complaint (Dkt. No. 1) as follows:

I. INTRODUCTION

1. Answering paragraph 1, deny that these responding Defendants were violated any law or legal duty as alleged, or otherwise; as to the remaining allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

II. THE PARTIES

2. Answering paragraph 2, deny Defendants violated any constitutional rights as to the remaining allegations, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

3. Answering paragraph 3, information and belief, admit only those allegations that identify the composition and location of the City of Wauwatosa; as to all other allegations, assert that the allegations in this Paragraph are conclusions of law to which no response is required.

4. Answering paragraph 4, Admit.
5. Answering paragraph 5, upon information and belief, admit.
6. Answering paragraph 6, admit.
7. Answering paragraph 7, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
8. Answering paragraph 8, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

III. FACTUAL ALLEGATIONS

9. Answering paragraph 9, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
10. Answering paragraph 10, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
11. Answering paragraph 11, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
12. Answering paragraph 12, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
13. Answering paragraph 13, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
14. Answering paragraph 14, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
15. Answering paragraph 15, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.
16. Answering paragraph 16, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

17. Answering paragraph 17, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

18. Answering paragraph 18, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

19. Answering paragraph 19, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

20. Answering paragraph 20, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

21. Answering paragraph 21, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

22. Answering paragraph 22, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

23. Answering paragraph 23, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

24. Answering paragraph 24, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

25. Answering paragraph 25, admit.

26. Answering paragraph 26, admit.

27. Answering paragraph 27, admit.

28. Answering paragraph 28, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

29. Answering paragraph 29, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

30. Answering paragraph 30, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

31. Answering paragraph 31, deny that the WPD Defendants assaulted Ms. Smith. As further response, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

32. Answering paragraph 32, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

33. Answering paragraph 33, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

34. Answering paragraph 34, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

35. Answering paragraph 35, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

36. Answering paragraph 36, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

37. Answering paragraph 37, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

38. Answering paragraph 38, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

39. Answering paragraph 39, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

40. Answering paragraph 40, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

41. Answering paragraph 41, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

42. Answering paragraph 42, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

43. Answering paragraph 43, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

44. Answering paragraph 44, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

45. Answering paragraph 45, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

46. Answering paragraph 46, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

47. Answering paragraph 47, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

48. Answering paragraph 48, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

IV. FIRST CLAIM FOR RELIEF AGAINST DEFENDANTS CPT. VETTER, LT. FARINA, OFC. ZIEGLER, AND ABC DEFENDANTS - EXCESSIVE FORCE

49. Answering paragraph 49, Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 48 of the Complaint.

50. Answering paragraph 50, assert that the allegations in this Paragraph are conclusions of law to which no response is required. To the extent that a response is required, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

51. Answering paragraph 51, deny.

52. Answering paragraph 52, deny any allegations that purport to make a claim of improper or unlawful conduct on the part of these responding Defendants, deny

53. Answering paragraph 53, deny.

54. Answering paragraph 54, assert that the allegations in this Paragraph are conclusions of law to which no response is required. To the extent that a response is required, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

55. Answering paragraph 55, deny any misconduct on the part of these responding Defendants, and deny liability to the Plaintiffs as alleged or otherwise.

56. Answering paragraph 56, assert that the allegations in this Paragraph are conclusions of law to which no response is required. To the extent that a response is required, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

V. SECOND CLAIM FOR RELIEF AGAINST DEFENDANTS CPT. VETTER, LT. FARINA, OFC. ZIEGLER, AND ABC DEFENDANTS - FAILURE TO INTERVENE

57. Answering paragraph 57, Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 56 of the Complaint.

58. Answering paragraph 58, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiff to her proof.

59. Answering paragraph 59, deny that Defendants used excessive force and further deny these Defendants caused a constitutional injury to Plaintiffs, and deny liability to the plaintiff as alleged or otherwise. As further response, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

60. Answering paragraph 60, deny that Defendants used excessive force and further deny these Defendants caused a constitutional injury to Plaintiffs, and deny liability to the plaintiff as alleged or otherwise. As further response, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

61. Answering paragraph 61, deny that Defendants used excessive force and further deny these Defendants caused a constitutional injury to Plaintiffs, and deny liability to the plaintiff as alleged or otherwise. As further response, lack knowledge and information sufficient to form a belief as to the truth of the allegations, and therefore deny and put Plaintiffs to their proof.

62. Answering paragraph 62, deny Defendants caused a constitutional injury to Plaintiffs, and deny liability to the plaintiff as alleged or otherwise.

VI. THIRD CLAIM FOR RELIEF AGAINST DEFENDANTS CPT. VETTER, LT. FARINA, OFC. ZIEGLER, AND ABC DEFENDANTS - PUNITIVE DAMAGES

63. Answering paragraph 63, Defendants reallege and incorporate, as though more fully set forth herein, the responses to paragraphs 1 through 62 of the Complaint.

64. Answering paragraph 64, deny.

65. Answering paragraph 65, deny.

66. Answering paragraph 66, deny.

67. Answering paragraph 67, deny.

68. Answering paragraph 68, deny any misconduct on the part of these responding Defendants, and deny liability to the Plaintiffs as alleged or otherwise.

AFFIRMATIVE DEFENSES

1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
2. Any injuries or damages suffered by Plaintiff were caused by her own conduct and/or the conduct and contributory negligence of a third party other than the Defendants.

4. Plaintiff may have failed to mitigate her damages.
5. The conduct attributed to these responding defendants did not constitute any violation of a cognizable constitutional right and this action must be summarily dismissed.
6. All of the acts of the responding Defendants were undertaken in good faith and not motivated by malice or the intent to harm.
7. The defendants are not liable under 42 USC §1983 because their actions were constitutional under the circumstances or exigent circumstances and did not compromise or deprive the plaintiff of any rights.
8. The defendants acted at all times reasonably and with a good faith belief that their actions were lawful and were not in violation of any federal or state constitutional right.
9. Plaintiff is not entitled to punitive damages.
10. The defendants acted within the discretionary scope of their authority as public officials in response to the circumstances and/or exigent circumstances.
11. Defendants are entitled to discretionary act immunity.
12. The actions of the responding individual defendants were objectively reasonable, and they are entitled to immunity and/or qualified immunity from claims, as well as limitations on actions and damages, as provided by Wisconsin Statutes, by federal regulations, and by operation of state and federal common law.
13. Plaintiff's claims are barred under theories of Res Judicata, claim preclusions, and/or issue preclusion.

WHEREFORE, Defendants request judgment as follows:

1. Dismissing the Complaint of the Plaintiff on its merits, together with costs and disbursements as well as attorney's fees in favor of Defendants.

2. For such other further relief as the Court may deem just and equitable and to which the Defendants are entitled.

Dated at Wauwatosa, Wisconsin this 12th day of October 2023.

WIRTH + BAYNARD
Attorneys for Defendants

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